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IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT IN AND FOR MARTIN COUNTY, FLORIDA

CASE NO.: 2022-928CA

CIVIL DIVISION

ERICA HERMAN,

Plaintiff,

v.

JUPITER ISLAND IRREVOCABLE HOMESTEAD TRUST,

Defendant.
_________________________________/

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DEFENDANT'S MOTION TO DISMISS COMPLAINT

Defendant, Christopher J. Hubman, as trustee of the Jupiter Island Irrevocable Homestead Trust (the "Trust"), moves pursuant to Rule 1.140 of the Florida Rules of Civil Procedure to dismiss Plaintiff's Complaint for Violation of Florida Residential Landlord Tenant Act, and states:

I. The Complaint

This is an action for an alleged violation of the Florida Residential Landlord Tenant Act (the "Act"). Plaintiff alleges that she resided at 462 S. Beach Road, Hobe Sound, Florida 33455 (the "Residence"). (Compl., ¶ 2) She alleges further that the Residence is owned by the Trust. (Compl., ¶ 3)

Next, Plaintiff alleges that she entered an "oral tenancy agreement" with an agent of the Trust and performed unspecified "valuable services" for the agent that were "extensive and of an extraordinary nature." (Compl., ¶¶ 5-6) As consideration for these "valuable services," Plaintiff alleges that the oral tenancy agreement gave her the right to live in the Residence for a "certain duration of time." (Compl., ¶ 6) According to the Complaint, for the past six years, Plaintiff

performed services and lived in the Residence pursuant to the agreement. (Compl., ¶¶ 5-6) She alleges that "[a]pproximately 5 years remain[ ] on the oral tenancy agreement." (Compl, ¶ 6)

Defendant allegedly breached the oral tenancy agreement because, without first commencing a lawful judicial proceeding to bring the tenancy to a lawful end, the Trust's agents locked Plaintiff out of the Residence, removed her personal belongings, and informed her she could not return. (Compl., ¶¶ 8-9) Remarkably, Plaintiff alleges that the value of her remaining five-year tenancy is in excess of $30 million—in other words, that in exchange for Plaintiff's services, she was to be provided consideration in excess of $6 million per year.[1] (Compl., ¶ 12)

Ultimately, Plaintiff alleges that the actions of the Defendant or its agent were "prohibited practices" under Fla. Stat. § 83.67, entitling Plaintiff to monetary damages, injunctive or declaratory relief, and attorney's fees. (Compl., ¶¶ 13-14) Lastly, though she fails to allege a single physical injury, Plaintiff alleges that she "is entitled to civil relief for personal injuries these breaches/violations have caused." (Compl., ¶ 14)

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II.
Standard of Review

"To survive a motion to dismiss, a complaint must allege a prima facie case." *Alvarez v. E & A Produce Corp.*, 708 So. 2d 997, 999 (Fla. 3d DCA 1998). Florida is a fact pleading jurisdiction, requiring a party to plead facts sufficient to show entitlement to relief. *Clark v. Boeing Co.*, 395 So. 2d 1226, 1229 (Fla. 3d DCA 1981) (A plaintiff's pleadings "must contain ultimate facts supporting each element of the cause of action. Mere conclusions are insufficient."). A party must allege sufficient ultimate facts to show they are entitled to relief. FLA. R. CIV. P. 1.110;

[1] In addition to the alleged right to receive the alleged rental value of the Residence, Plaintiff alleges that "[a]ll expenses that related to Plaintiff's residency, or that resulted therefrom, were to be fully paid by the Defendant or its privies." (Compl., ¶ 6)

Dewitt v. Rossi, 559 So. 2d 659, 659 (Fla. 5th DCA 1990)).

III.
Argument and Memorandum of Law

A. Plaintiff Cannot State a Claim Under the Residential Landlord Tenant Act

Plaintiff's complaint seeks relief pursuant to Florida Statutes, Chapter 83, Part II – the Florida Residential Landlord Tenant Act. *See* Fla. Stat. § 83.40 *et seq.* Defendant, or its agents, allegedly violated section 83.67 of the Act, entitled "Prohibited practices," which, among other things, expressly prohibits a landlord from:

> (2) prevent[ing] **the tenant** from gaining reasonable access to the dwelling unit . . .
>
> ***
>
> (5) remov[ing] **the tenant's** personal property from the dwelling unit . . .

(emphasis added) Any violation of section 83.67 entitles **"the tenant"** to damages and other relief provided by the Act. *See* Fla. Stat. § 83.67(6)-(7). Section 83.54 creates a civil cause of action to enforce "[a]ny right or duty declared in this [Act]" and section 83.55 provides that if a "**rental agreement**" is not complied with, an "aggrieved party may recover the damages caused by the noncompliance."

A "**tenant**" is defined under the Act as "any person entitled to occupy a dwelling unit under a **rental agreement**." Fla. Stat. § 83.43(4) (emphasis added). Critically, a "**rental Agreement**" is defined under the Act as "any written agreement, including amendments or addenda, **or oral agreement for a duration of less than 1 year**, providing for use and occupancy of premises." Fla. Stat. § 83.43(7) (emphasis added). Stated another way, to qualify as a "tenant" entitled to protection under the Act, an oral tenancy agreement must be "for a duration of less than 1 year."

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In *Toledo v. Escamilla*, 962 So. 2d 1028, 1030 (Fla. 3d DCA 2007), the Court held that "a landlord/tenant relationship is a condition precedent" to applying the statutory remedies provided by the Act. In *Toledo*, the defendant and her boyfriend lived in a condominium owned by the boyfriend. *Id.* at 1029. After the relationship ended and the boyfriend moved out, the defendant continued living in the condominium for approximately four years. *Id.* When the former boyfriend sold the condominium to a new owner, the new owner sued to evict the defendant under the Florida Residential Landlord Tenant Act, alleging that the defendant was a tenant under an oral lease agreement with the former boyfriend. *Id.* at 1028-29. Relying on the statutory definitions of "tenant" and "rental agreement," the *Toledo* court determined that the alleged oral agreement between the defendant and the former boyfriend was not a "rental agreement" under section 83.43(7) of the Act because it was not for a duration of less than one year, as evidenced by the fact that the defendant continued to live in the condominium for four years after the relationship ended. *Id.* Further, because there was no "rental agreement" as defined by the Act, the defendant in *Toledo* could not meet the definition of "tenant" under section 83.43(4) of the Act. *Id.* Accordingly, the *Toledo* court held that the lower court lacked jurisdiction to apply any remedies afforded by the Act. *Id.*

Similarly, here, Plaintiff alleges that the alleged oral tenancy was for a period totaling eleven years, with five years remaining at the time of the alleged statutory violations. (Compl., ¶¶ 6, 9) Taking Plaintiff's allegations as true, the alleged oral tenancy agreement is not a "rental agreement" as defined by the Act because it is not for a duration of less than one year. Thus, Plaintiff cannot be said to be occupying the Residence under a "rental agreement," and, therefore, cannot be considered a "tenant" under the Act. The *Toledo* decision makes clear that a landlord/tenant relationship is a "condition precedent" to entitlement to relief under the Act. 962

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So. 2d 1030. Because Plaintiff in this case is not a "tenant" under the Act and cannot plead the existence of a landlord/tenant relationship between her and the Trust, Plaintiff cannot state a valid cause of action entitling her to relief under the Act. Accordingly, the Complaint fails as a matter of law and must be dismissed.

B. The Trust Is Not the Real Party in Interest

The Trust is not a proper party. "A trust is not a legal entity." 76 Am. Jur. 2d Trusts § 2. "In its simplest form, a trust is created when one person (a "settlor" or "grantor") transfers property to a third party (a "trustee") to administer for the benefit of another (a "beneficiary"). As traditionally understood, the arrangement that results is not a "distinct legal entity, but a 'fiduciary relationship' between multiple people." *N. Carolina Dep't of Revenue v. The Kimberley Rice Kaestner 1992 Fam. Tr.*, 139 S. Ct. 2213, 2217–18 (2019) (citations omitted); *see also Randolph Found. v. Appeal From Prob. Ct. of Westport*, 2001 WL 418059, at *16 (Conn. Super. Ct. Apr. 3, 2001) (A trust is "'a fiduciary relationship with respect to property, subjecting the person by whom the title to property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it.'") (citing I Scott, Trusts § 2.3 (4th Ed.1987)).

"At common law, a trust cannot sue or be sued because it is not a juristic person. In most jurisdictions, a trust is not an entity separate from its trustees, and cannot sue or be sued in its own name, and therefore, the trustee, rather than the trust, is the real party in interest in litigation involving trust property." 76 Am. Jur. 2d Trusts § 601; *see also Winn-Dixie Stores, Inc. v. Goodman*, 276 So. 2d 465, 466 (Fla. 1972) ("[A] trustee is an indispensable party in a suit involving the trust."). Tellingly, in Florida, a trust is created by some form of transfer of property to a trustee. *See* Fla. Stat. § 736.0401.

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Although Plaintiff served the proper party with the Complaint—*viz*., the trustee—the Complaint names only the Trust as a defendant in this action. This is improper. The Trust is not an entity that can sue or be sued. Accordingly, the Complaint should be dismissed because it fails to name the trustee of the Trust as the proper party defendant.

C. The Court Should Dismiss the Complaint with Prejudice Because Any Amendment Would Be Futile

The defects and failings of the Complaint cannot be cured through an amendment. Though refusal to allow an amendment is often an abuse of a trial court's discretion, a trial court may refuse to allow amendment where it clearly appears that any amendment would be futile. *See McCray v. Bellsouth Telecommunications, Inc.*, 213 So. 3d 938, 939 (Fla. 4th DCA 2017). Here, the Complaint should be dismissed with prejudice because any amendment would be futile.

It is not possible for Plaintiff to amend her pleading to state a viable contractual claim on the alleged oral tenancy agreement (as distinguished from the present statutory claim) because any contractual claim for money damages would be barred by Florida's Statute of Frauds. "The purpose of Florida's Statute of Frauds is . . . to intercept the frequency and success of actions based on nothing more than loose verbal statements or mere innuendos." *DK Arena, Inc. v. EB Acquisitions I, LLC*, 112 So. 3d 85, 92 (Fla. 2013) (citations omitted). The statute provides in relevant part:

> **No action shall be brought ... for any lease thereof for a period longer than 1 year, or upon any agreement that is not to be performed within the space of 1 year from the making thereof . . . unless the agreement** or promise upon which such action shall be brought, or some note or memorandum thereof **shall be in writing** and signed by the party to be charged therewith or by some other person by her or him thereunto lawfully authorized.

Fla. Stat. § 725.01 (emphasis added).

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Plaintiff's Complaint alleges the existence of an eleven-year oral tenancy agreement that has five years remaining. It clearly runs afoul of the statute of frauds. Moreover, though Plaintiff alleges that she "performed valuable services . . . all in part performance of the oral tenancy agreement," (Compl., ¶ 5), her alleged partial performance does not remove the agreement from the statute of frauds. *Campo v. Tafur*, 704 So. 2d 730, 733 (Fla. 4th DCA 1998), involved a similar fact pattern where a plaintiff sued for breach of an oral tenancy agreement alleging that as consideration for her agreement to provide the defendant with "domestic and other personal services," she was entitled to "room, board, and sustenance for the rest of her life." The *Campo* court dismissed the case because the claim on the oral agreement was barred by the statute of frauds:

> Campo cannot argue that the statute does not apply based on the fact that she provided these services until the parties separated, as the law holds that partial performance of a contract for personal services which exceeds one year is not an exception to this rule.

Id.[2] Stated simply, Plaintiff's alleged partial performance of the oral tenancy agreement does not provide an exception to the statute of frauds.

The *Campo* decision makes clear that Plaintiff's defective statutory claim under the Residential Landlord Tenant Act cannot be cured by amending the Complaint to assert a contractual claim on the alleged oral tenancy agreement. Thus, providing leave to amend to assert a contractual claim would be futile.

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[2] *See also Wharfside at Boca Pointe, Inc. v. Superior Bank*, 741 So. 2d 542, 545 (Fla. 4th DCA 1999) ("[t]he doctrine of part performance to excuse a failure to comply with the statute of frauds is not available in Florida to actions solely for money damages."); *Hosp. Corp. of Am. v. Assocs. In Adolescent Psychiatry, S.C.*, 605 So. 2d 556, 558 (Fla. 4th DCA 1992) ("the doctrine of part performance does not remove the bar of the statute of frauds from actions for damages based upon the breach of oral contracts.")

III.
Conclusion

Plaintiff's claims under the Residential Landlord Tenant Act fail as a matter of law because she is not a "tenant" as defined by the Act. Moreover, Plaintiff has failed to name the proper party defendant because a Trust is not a "juristic person" capable of suing or being sued. Rather, the trustee is the proper party. Finally, though ordinarily a party should be granted leave to amend, leave to amend need not be granted where amendment would be futile. Here, any contractual claim on the alleged oral tenancy agreement would be barred by the statute of frauds and, thus, amendment would indeed be futile. Accordingly, this Court should dismiss the Complaint with prejudice, award Defendant his attorney's fees and costs pursuant to Fla. Stat. § 83.48, and provide such other relief as is deemed just and proper.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 15, 2022 a true and correct copy of the foregoing document was filed and served via e-mail through the Florida Court's E-Filing Portal to all counsel of record.

/s/ J.B. Murray
John B.T. Murray, Jr.

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